

By: Elkins

H.B. No. 2176

A BILL TO BE ENTITLED

AN ACT

relating to ad valorem tax sales of real and personal property following foreclosure or seizure of the property; authorizing a sale by on-line auction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 33.25, Tax Code, is amended to read as follows:

Sec. 33.25. ~~[NOTICE OF]~~ TAX SALE: NOTICE; METHOD;
DISPOSITION OF PROCEEDS. (a) After ~~[Except as provided by~~
~~Subsection (c), after]~~ a seizure of personal property, the collector shall make a reasonable inquiry to determine the identity and to ascertain the address of any person having an interest in the property other than the person against whom the tax warrant is issued. The collector shall provide in writing the name and address of each other person the collector identifies as having an interest in the property to the peace officer charged with executing the warrant. The peace officer shall deliver as soon as possible a written notice stating the time and place of the sale and briefly describing the property seized to the person against whom the warrant is issued and to any other person having an interest in the property whose name and address the collector provided to the peace officer. The posting of the notice and the sale of the property shall be conducted by the peace officer:

(1) in the manner required for the sale under

1 execution of personal property; or

2 (2) in the manner provided by Section 34.014.

3 (b) The peace officer charged with selling the property may
4 enter into an agreement with a person who holds an auctioneer's
5 license to advertise the auction sale of the property and to conduct
6 the auction sale of the property. The terms of the agreement
7 entered into by the peace officer with the licensed auctioneer must
8 be approved in writing by the collector of each taxing unit entitled
9 to receive proceeds from the sale of the property. An agreement
10 that is not approved by a collector is voidable by that collector.
11 An agreement entered into under this subsection that is approved by
12 all necessary collectors is presumed to be commercially reasonable
13 and the presumption may not be rebutted by any person.

14 (c) Failure to send or receive a [the] notice required
15 [provided] by this section does not affect the validity of the sale
16 or title to the seized property.

17 (d) The proceeds of a sale of property under this section
18 shall be applied to:

19 (1) any compensation owed to or any expense advanced
20 by the licensed auctioneer under a contract entered into under
21 Subsection (b) or a service provider under an agreement entered
22 into under Section 34.014;

23 (2) all usual costs, expenses, and fees of the seizure
24 and sale, payable to the peace officer conducting the sale;

25 (3) all additional expenses incurred in advertising
26 the sale or in removing, storing, preserving, or safeguarding the
27 seized property pending its sale;

1 (4) all usual court costs payable to the clerk of the
2 court that issued the tax warrant; and

3 (5) taxes, penalties, and interest included in the
4 application for warrant.

5 (e) The peace officer conducting the sale shall pay any
6 excess proceeds after payment of all amounts as required by
7 Subsection (d) in the manner provided in the case of execution.

8 ~~[(c) After a seizure of personal property defined by Sections~~
9 ~~33.21(d)(2)-(5), the collector shall apply the seized property~~
10 ~~toward the payment of the taxes, penalties, and interest included~~
11 ~~in the application for warrant and all costs of the seizure.]~~

12 SECTION 2. Section 34.01(r), Tax Code, is amended to read as
13 follows:

14 (r) Except as provided by this subsection and by Section
15 34.014, a [A] sale of real property under this section must take
16 place at the county courthouse in the county in which the land is
17 located. The commissioners court of the county may designate an
18 [the] area in the county courthouse or another location in the
19 county where sales under this section must take place and shall
20 record any designated area or other location in the real property
21 records of the county. If the commissioners court designates an
22 area in the courthouse or another location in the county for sales,
23 a sale must occur in that area or at that location. If the
24 commissioners court does not designate an area in the courthouse or
25 another location in the county for sales, a sale must occur in the
26 same area in the courthouse that is designated by the commissioners
27 court for the sale of real property under Section 51.002, Property

Code.

SECTION 3. Subchapter A, Chapter 34, Tax Code, is amended by adding Section 34.014 to read as follows:

Sec. 34.014. ON-LINE AUCTION ALTERNATIVE METHOD OF SALE.

(a) The commissioners court of a county by official action may authorize an officer of the county charged with selling property under this subchapter or Chapter 33 by public auction to enter into an agreement with a service provider to advertise the auction and to conduct the auction sale of the property using the Internet if the property to be sold is:

(1) personal property seized under Subchapter B, Chapter 33;

(2) real property seized under Subchapter E, Chapter 33;

(3) real property being sold under Section 34.01; or

(4) real property being resold under Section 34.05.

(b) A sale in the manner authorized by Subsection (a) may be conducted only if the collector for each taxing unit entitled to receive proceeds from the sale of the property gives the collector's written consent to the sale and to the terms of the agreement entered into under that subsection. An agreement that is not approved by a collector is voidable by that collector. An agreement entered into under Subsection (a) that is approved by all necessary collectors is presumed to be commercially reasonable, and the presumption may not be rebutted by any person.

(c) An agreement entered into under Subsection (a) must include provisions that require the service provider to advertise

1 the property for auction and to organize, post, host, and service
2 the information relating to the advertisement and auction of the
3 property.

4 (d) Advertising of an auction on the Internet must be posted
5 on the Internet at least 30 days before the auction begins and
6 remain posted until the auction is closed. An auction-advertising
7 website shall be developed and maintained to accommodate all
8 necessary aspects of auction advertising as considered necessary or
9 advisable by the officer charged with selling the property.

10 (e) The service provider, at the direction of the officer
11 charged with selling the property, shall develop a web-based
12 marketing effort, disseminate due diligence information on-line to
13 potential bidders, and support the sale of the property.

14 (f) The advertising relating to property to be sold by
15 auction on the Internet must include:

16 (1) a description of each property or lot of property,
17 including any property parcel number, the property address, and the
18 most recent appraised value;

19 (2) photographs of the property, if available;

20 (3) maps depicting the location of real property;

21 (4) a description of any special features of the
22 property;

23 (5) the terms of the auction sale;

24 (6) the minimum acceptable bid for the property;

25 (7) a statement that no representation or warranty is
26 made regarding the property; and

27 (8) any other information considered necessary or

1 advisable by the officer charged with selling the property or the
2 service provider to assist a bidder in making an informed purchase
3 decision.

4 (g) The agreement may require the service provider to assign
5 passwords to registered and prequalified bidders in accordance with
6 criteria for the qualification of bidders adopted by the officer
7 charged with selling the property and structure an auction so that
8 those bidders may bid automatically.

9 (h) The agreement may require the service provider to send
10 notice to registered and prequalified bidders by electronic mail on
11 the occurrence of:

12 (1) the posting on-line of auction-advertising
13 information;

14 (2) the commencement of an auction;

15 (3) the receipt of an initial or a higher bid;

16 (4) the closing of an auction; or

17 (5) the sale of property to a bidder.

18 (i) The agreement may require the service provider to
19 structure the website so as to inform potential bidders of relevant
20 information concerning tax sales of property in this state as
21 required by the officer charged with selling the property or as
22 considered advisable by the service provider. To be eligible to bid
23 on property, a person must acknowledge receipt of the information.

24 (j) The agreement may require that bidders submit a
25 qualifying deposit to the treasurer of the political subdivision or
26 the taxing unit that requested the order of sale in an amount
27 sufficient to demonstrate the bidder's ability to comply with all

1 terms of a sale as a precondition for bidding.

2 (k) The agreement may require the service provider to
3 structure the website so as to enable prequalified bidders who do
4 not have Internet access to submit a bid on the property by
5 telephone, facsimile, or mail.

6 (1) The agreement may require the service provider to
7 structure the website in a manner that permits the officer charged
8 with selling the property or the taxing unit that requested the
9 order of sale to:

10 (1) withdraw or remove one or more properties from the
11 auction advertising for any reason or remove one or more properties
12 from an auction before the opening of bids;

13 (2) reject any bid for any reason; or

14 (3) discontinue or conclude an auction at any time.

15 (m) Each auction shall be continued for a reasonable period
16 as determined by the officer charged with selling the property or
17 the taxing unit that requested the order of sale before the auction
18 and be advertised on the website. The auction may not be
19 discontinued or concluded before the time advertised except at the
20 specific direction of the officer or taxing unit.

21 (n) Except as provided by this section:

22 (1) the provisions of Section 34.01 apply to a sale
23 conducted under this section; and

24 (2) a reference in law to a sale under Section 34.01
25 includes a sale conducted under this section.

26 SECTION 4. This Act takes effect September 1, 2003, and
27 applies only to the sale of tax foreclosed property pursuant to an

H.B. No. 2176

1 order of sale issued on or after the effective date of this Act.